

106TH CONGRESS
1ST SESSION

S. 1241

To amend the Fair Labor Standards Act of 1938 to provide to private sector employees the same opportunities for time-and-a-half compensatory time off and biweekly work programs as Federal employees currently enjoy to help balance the demands and needs of work and family, to clarify the provisions relating to exemptions of certain professionals from minimum wage and overtime requirements of the Fair Labor Standards Act of 1938, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 17, 1999

Mr. ASHCROFT (for himself, Mrs. HUTCHISON, Mr. ABRAHAM, Mr. ALLARD, Mr. BOND, Mr. BROWNBACK, Mr. BUNNING, Mr. BURNS, Mr. CHAFEE, Mr. COCHRAN, Ms. COLLINS, Mr. COVERDELL, Mr. CRAIG, Mr. DEWINE, Mr. DOMENICI, Mr. ENZI, Mr. FRIST, Mr. GRAMM, Mr. GRASSLEY, Mr. GREGG, Mr. HAGEL, Mr. HATCH, Mr. HELMS, Mr. HUTCHINSON, Mr. JEFFORDS, Mr. KYL, Mr. LOTT, Mr. MCCAIN, Mr. MCCONNELL, Mr. NICKLES, Mr. ROBERTS, Mr. SESSIONS, Mr. SMITH of Oregon, Mr. SMITH of New Hampshire, Mr. THOMAS, Mr. THURMOND, and Mr. SHELBY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Fair Labor Standards Act of 1938 to provide to private sector employees the same opportunities for time-and-a-half compensatory time off and biweekly work programs as Federal employees currently enjoy to help balance the demands and needs of work and family, to clarify the provisions relating to exemptions of certain professionals from minimum wage and overtime require-

ments of the Fair Labor Standards Act of 1938, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Family Friendly Work-
 5 place Act”.

6 **SEC. 2. WORKPLACE FLEXIBILITY OPTIONS.**

7 (a) COMPENSATORY TIME OFF.—Section 7 of the
 8 Fair Labor Standards Act of 1938 (29 U.S.C. 207) is
 9 amended by adding at the end the following:

10 “(r)(1)(A) Except as provided in subparagraph (B),
 11 no employee may be required under this subsection to re-
 12 ceive compensatory time off in lieu of monetary overtime
 13 compensation. The acceptance of compensatory time off
 14 in lieu of monetary overtime compensation may not be a
 15 condition of employment.

16 “(B) In a case in which a valid collective bargaining
 17 agreement exists between an employer and the labor orga-
 18 nization that has been certified or recognized as the rep-
 19 resentative of the employees of the employer under appli-
 20 cable law, an employee may only be required under this
 21 subsection to receive compensatory time off in lieu of mon-
 22 etary overtime compensation in accordance with the agree-
 23 ment.

1 “(2)(A) An employee may receive, in accordance with
 2 this subsection and in lieu of monetary overtime com-
 3 pensation, compensatory time off at a rate not less than
 4 one and one-half hours for each hour of employment for
 5 which monetary overtime compensation is required by this
 6 section.

7 “(B) In this subsection:

8 “(i) The term ‘employee’ means an individual—

9 “(I) who is an employee (as defined in sec-
 10 tion 3);

11 “(II) who is not an employee of a public
 12 agency; and

13 “(III) to whom subsection (a) applies.

14 “(ii) The term ‘employer’ does not include a
 15 public agency.

16 “(3) An employer may provide compensatory time off
 17 to employees under paragraph (2)(A) only pursuant to the
 18 following:

19 “(A) The compensatory time off may be pro-
 20 vided only in accordance with—

21 “(i) applicable provisions of a collective
 22 bargaining agreement between the employer
 23 and the labor organization that has been cer-
 24 tified or recognized as the representative of the
 25 employees under applicable law; or

1 “(ii) in the case of an employee who is not
2 represented by a labor organization described in
3 clause (i), an agreement or understanding ar-
4 rived at between the employer and employee be-
5 fore the performance of the work involved if the
6 agreement or understanding was entered into
7 knowingly and voluntarily by such employee and
8 was not a condition of employment.

9 “(B) The compensatory time off may only be
10 provided to an employee described in subparagraph
11 (A)(ii) if such employee has affirmed, in a written
12 or otherwise verifiable statement that is made, kept,
13 and preserved in accordance with section 11(c), that
14 the employee has chosen to receive compensatory
15 time off in lieu of monetary overtime compensation.

16 “(C) No employee may receive, or agree to re-
17 ceive, the compensatory time off unless the employee
18 has been employed for at least 12 months by the
19 employer, and for at least 1,250 hours of service
20 with the employer during the previous 12-month pe-
21 riod.

22 “(D) An employee shall be eligible to accrue
23 compensatory time off if such employee has not ac-
24 crued compensatory time off in excess of the limit

1 applicable to the employee prescribed by paragraph
2 (4).

3 “(4)(A) An employee may accrue not more than 160
4 hours of compensatory time off.

5 “(B) Not later than January 31 of each calendar
6 year, the employer of the employee shall provide monetary
7 compensation for any unused compensatory time off ac-
8 crued during the preceding calendar year that was not
9 used prior to December 31 of the preceding calendar year
10 at the rate prescribed by paragraph (8). An employer may
11 designate and communicate to the employees of the em-
12 ployer a 12-month period other than the calendar year,
13 in which case the compensation shall be provided not later
14 than 31 days after the end of the 12-month period.

15 “(C) The employer may provide monetary compensa-
16 tion for an employee’s unused compensatory time off in
17 excess of 80 hours at any time after providing the em-
18 ployee with at least 30 days’ written notice. The com-
19 pensation shall be provided at the rate prescribed by para-
20 graph (8).

21 “(5)(A) An employer that has adopted a policy offer-
22 ing compensatory time off to employees may discontinue
23 the policy for employees described in paragraph (3)(A)(ii)
24 after providing 30 days’ written notice to the employees

1 who are subject to an agreement or understanding de-
2 scribed in paragraph (3)(A)(ii).

3 “(B) An employee may withdraw an agreement or un-
4 derstanding described in paragraph (3)(A)(ii) at any time,
5 by submitting a written notice of withdrawal to the em-
6 ployer of the employee. An employee may also request in
7 writing that monetary compensation be provided, at any
8 time, for all compensatory time off accrued that has not
9 been used. Within 30 days after receiving the written re-
10 quest, the employer shall provide the employee the mone-
11 tary compensation due in accordance with paragraph (8).

12 “(6)(A)(i) An employer that provides compensatory
13 time off under paragraph (2) to an employee shall not di-
14 rectly or indirectly intimidate, threaten, or coerce, or at-
15 tempt to intimidate, threaten, or coerce, any employee for
16 the purpose of—

17 “(I) interfering with the rights of the employee
18 under this subsection to request or not request com-
19 pensatory time off in lieu of payment of monetary
20 overtime compensation for overtime hours;

21 “(II) interfering with the rights of the employee
22 to use accrued compensatory time off in accordance
23 with paragraph (9); or

24 “(III) requiring the employee to use the com-
25 pensatory time off.

1 “(ii) In clause (i), the term ‘intimidate, threaten, or
 2 coerce’ has the meaning given the term in section
 3 13A(c)(2).

4 “(B) An agreement or understanding that is entered
 5 into by an employee and employer under paragraph
 6 (3)(A)(ii) shall permit the employee to elect, for an appli-
 7 cable workweek—

8 “(i) the payment of monetary overtime com-
 9 pensation for the workweek; or

10 “(ii) the accrual of compensatory time off in
 11 lieu of the payment of monetary overtime compensa-
 12 tion for the workweek.”.

13 (b) REMEDIES AND SANCTIONS.—Section 16 of the
 14 Fair Labor Standards Act of 1938 (29 U.S.C. 216) is
 15 amended by adding at the end the following:

16 “(f)(1) In addition to any amount that an employer
 17 is liable under subsection (b) for a violation of a provision
 18 of section 7, an employer that violates section 7(r)(6)(A)
 19 shall be liable to the employee affected in an amount equal
 20 to—

21 “(A) the product of—

22 “(i) the rate of compensation (determined
 23 in accordance with section 7(r)(8)(A)); and

1 “(ii)(I) the number of hours of compen-
 2 satory time off involved in the violation that
 3 was initially accrued by the employee; minus

4 “(II) the number of such hours used by
 5 the employee; and

6 “(B) as liquidated damages, the product of—

7 “(i) such rate of compensation; and

8 “(ii) the number of hours of compensatory
 9 time off involved in the violation that was ini-
 10 tially accrued by the employee.

11 “(2) The employer shall be subject to such liability
 12 in addition to any other remedy available for such violation
 13 under this section or section 17, including a criminal pen-
 14 alty under subsection (a) and a civil penalty under sub-
 15 section (e).”.

16 (c) CALCULATIONS AND SPECIAL RULES.—Section
 17 7(r) of the Fair Labor Standards Act of 1938 (29 U.S.C.
 18 207(r)), as added by subsection (a), is amended by adding
 19 at the end the following:

20 “(7) An employee who has accrued compensatory
 21 time off authorized to be provided under paragraph (2)
 22 shall, upon the voluntary or involuntary termination of
 23 employment, be paid for the unused compensatory time
 24 off in accordance with paragraph (8).

1 “(8)(A) If compensation is to be paid to an employee
 2 for accrued compensatory time off, the compensation shall
 3 be paid at a rate of compensation not less than—

4 “(i) the regular rate received by such employee
 5 when the compensatory time off was earned; or

6 “(ii) the final regular rate received by such em-
 7 ployee;
 8 whichever is higher.

9 “(B) Any payment owed to an employee under this
 10 subsection for unused compensatory time off shall be con-
 11 sidered unpaid monetary overtime compensation.

12 “(9) An employee—

13 “(A) who has accrued compensatory time off
 14 authorized to be provided under paragraph (2); and

15 “(B) who has requested the use of the accrued
 16 compensatory time off;

17 shall be permitted by the employer of the employee to use
 18 the accrued compensatory time off within a reasonable pe-
 19 riod after making the request if the use of the accrued
 20 compensatory time off does not unduly disrupt the oper-
 21 ations of the employer.

22 “(10) The terms ‘monetary overtime compensation’
 23 and ‘compensatory time off’ shall have the meanings given
 24 the terms ‘overtime compensation’ and ‘compensatory
 25 time’, respectively, by subsection (o)(7).”.

1 (d) NOTICE TO EMPLOYEES.—Not later than 30 days
 2 after the date of enactment of this Act, the Secretary of
 3 Labor shall revise the materials the Secretary provides,
 4 under regulations contained in section 516.4 of title 29,
 5 Code of Federal Regulations, to employers for purposes
 6 of a notice explaining the Fair Labor Standards Act of
 7 1938 (29 U.S.C. 201 et seq.) to employees so that the
 8 notice reflects the amendments made to the Act by this
 9 section.

10 **SEC. 3. BIWEEKLY WORK PROGRAMS.**

11 (a) IN GENERAL.—The Fair Labor Standards Act of
 12 1938 is amended by inserting after section 13 (29 U.S.C.
 13 213) the following:

14 **“SEC. 13A. BIWEEKLY WORK PROGRAMS.**

15 “(a) VOLUNTARY PARTICIPATION.—

16 “(1) IN GENERAL.—Except as provided in para-
 17 graph (2), no employee may be required to partici-
 18 pate in a program described in this section. Partici-
 19 pation in a program described in this section may
 20 not be a condition of employment.

21 “(2) COLLECTIVE BARGAINING AGREEMENT.—

22 In a case in which a valid collective bargaining
 23 agreement exists between an employer and the labor
 24 organization that has been certified or recognized as
 25 the representative of the employees of the employer

1 under applicable law, an employee may only be re-
2 quired to participate in such a program in accord-
3 ance with the agreement.

4 “(b) BIWEEKLY WORK PROGRAMS.—

5 “(1) IN GENERAL.—Notwithstanding section 7,
6 an employer may establish biweekly work programs
7 that allow the use of a biweekly work schedule—

8 “(A) that consists of a basic work require-
9 ment of not more than 80 hours, over a 2-week
10 period; and

11 “(B) in which more than 40 hours of the
12 work requirement may occur in a week of the
13 period, except that no more than 10 hours may
14 be shifted between the 2 weeks involved.

15 “(2) CONDITIONS.—An employer may carry out
16 a biweekly work program described in paragraph (1)
17 for employees only pursuant to the following:

18 “(A) AGREEMENT OR UNDERSTANDING.—

19 The program may be carried out only in accord-
20 ance with—

21 “(i) applicable provisions of a collec-
22 tive bargaining agreement between the em-
23 ployer and the labor organization that has
24 been certified or recognized as the rep-

1 representative of the employees under applica-
2 ble law; or

3 “(ii) in the case of an employee who
4 is not represented by a labor organization
5 described in clause (i), an agreement or
6 understanding arrived at between the em-
7 ployer and employee before the perform-
8 ance of the work involved if the agreement
9 or understanding was entered into know-
10 ingly and voluntarily by such employee and
11 was not a condition of employment.

12 “(B) STATEMENT.—The program shall
13 apply to an employee described in subparagraph
14 (A)(ii) if such employee has affirmed, in a writ-
15 ten or otherwise verifiable statement that is
16 made, kept, and preserved in accordance with
17 section 11(c), that the employee has chosen to
18 participate in the program.

19 “(C) MINIMUM SERVICE.—No employee
20 may participate, or agree to participate, in the
21 program unless the employee has been em-
22 ployed for at least 12 months by the employer,
23 and for at least 1,250 hours of service with the
24 employer during the previous 12-month period.

1 “(3) COMPENSATION FOR HOURS IN SCHED-
2 ULE.—Notwithstanding section 7, in the case of an
3 employee participating in such a biweekly work pro-
4 gram, the employee shall be compensated for each
5 hour in such a biweekly work schedule at a rate not
6 less than the regular rate at which the employee is
7 employed.

8 “(4) COMPUTATION OF OVERTIME.—All hours
9 worked by the employee in excess of such a biweekly
10 work schedule or in excess of 80 hours in the 2-week
11 period, that are requested in advance by the em-
12 ployer, shall be overtime hours.

13 “(5) OVERTIME COMPENSATION PROVISION.—
14 The employee shall be compensated for each such
15 overtime hour at a rate not less than one and one-
16 half times the regular rate at which the employee is
17 employed, in accordance with section 7(a)(1), or re-
18 ceive compensatory time off in accordance with sec-
19 tion 7(r) for each such overtime hour.

20 “(6) DISCONTINUANCE OF PROGRAM OR WITH-
21 DRAWAL.—

22 “(A) DISCONTINUANCE OF PROGRAM.—An
23 employer that has established a biweekly work
24 program under paragraph (1) may discontinue
25 the program for employees described in para-

graph (2)(A)(ii) after providing 30 days' written notice to the employees who are subject to an agreement or understanding described in paragraph (2)(A)(ii).

“(B) WITHDRAWAL.—An employee may withdraw an agreement or understanding described in paragraph (2)(A)(ii) at the end of any 2-week period described in paragraph (1)(A), by submitting a written notice of withdrawal to the employer of the employee.

“(c) PROHIBITION OF COERCION.—

“(1) IN GENERAL.—An employer shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of interfering with the rights of the employee under this section to elect or not to elect to work a biweekly work schedule.

“(2) DEFINITION.—In paragraph (1), the term ‘intimidate, threaten, or coerce’ includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

“(d) DEFINITIONS.—In this section:

1 “(1) BASIC WORK REQUIREMENT.—The term
2 ‘basic work requirement’ means the number of
3 hours, excluding overtime hours, that an employee is
4 required to work or is required to account for by
5 leave or otherwise.

6 “(2) COLLECTIVE BARGAINING.—The term ‘col-
7 lective bargaining’ means the performance of the
8 mutual obligation of the representative of an em-
9 ployer and the labor organization that has been cer-
10 tified or recognized as the representative of the em-
11 ployees of the employer under applicable law to meet
12 at reasonable times and to consult and bargain in a
13 good-faith effort to reach agreement with respect to
14 the conditions of employment affecting such employ-
15 ees and to execute, if requested by either party, a
16 written document incorporating any collective bar-
17 gaining agreement reached, but the obligation re-
18 ferred to in this paragraph shall not compel either
19 party to agree to a proposal or to make a conces-
20 sion.

21 “(3) COLLECTIVE BARGAINING AGREEMENT.—
22 The term ‘collective bargaining agreement’ means an
23 agreement entered into as a result of collective bar-
24 gaining.

1 “(4) EMPLOYEE.—The term ‘employee’ means
2 an individual—

3 “(A) who is an employee (as defined in
4 section 3);

5 “(B) who is not an employee of a public
6 agency; and

7 “(C) to whom section 7(a) applies.

8 “(5) EMPLOYER.—The term ‘employer’ does
9 not include a public agency.

10 “(6) OVERTIME HOURS.—The term ‘overtime
11 hours’, when used with respect to biweekly work pro-
12 grams under subsection (b), means all hours worked
13 in excess of the biweekly work schedule involved or
14 in excess of 80 hours in the 2-week period involved,
15 that are requested in advance by an employer.

16 “(7) REGULAR RATE.—The term ‘regular rate’
17 has the meaning given the term in section 7(e).”.

18 (b) REMEDIES.—

19 (1) PROHIBITIONS.—Section 15(a)(3) of the
20 Fair Labor Standards Act of 1938 (29 U.S.C.
21 215(a)(3)) is amended—

22 (A) by inserting “(A)” after “(3)”;
23 (B) by adding “or” after the semicolon;

24 and

25 (C) by adding at the end the following:

1 “(B) to violate any of the provisions of section
2 13A;”.

3 (2) REMEDIES AND SANCTIONS.—Section 16 of
4 the Fair Labor Standards Act of 1938 (29 U.S.C.
5 216), as amended in section 2(b), is further
6 amended—

7 (A) in subsection (c)—

8 (i) in the first sentence—

9 (I) by inserting after “7 of this
10 Act” the following: “, or of the appro-
11 priate legal or monetary equitable re-
12 lief owing to any employee or employ-
13 ees under section 13A”; and

14 (II) by striking “wages or unpaid
15 overtime compensation and” and in-
16 serting “wages, unpaid overtime com-
17 pensation, or legal or monetary equi-
18 table relief, as appropriate, and”;

19 (ii) in the second sentence, by striking
20 “wages or overtime compensation and”
21 and inserting “wages, unpaid overtime
22 compensation, or legal or monetary equi-
23 table relief, as appropriate, and”; and

24 (iii) in the third sentence—

1 (I) by inserting after “first sen-
 2 tence of such subsection” the fol-
 3 lowing: “, or the second sentence of
 4 such subsection in the event of a vio-
 5 lation of section 13A,”; and

6 (II) by striking “wages or unpaid
 7 overtime compensation under sections
 8 6 and 7 or” and inserting “wages, un-
 9 paid overtime compensation, or legal
 10 or monetary equitable relief, as appro-
 11 priate, or”;

12 (B) in subsection (e)—

13 (i) in the second sentence, by striking
 14 “section 6 or 7” and inserting “section 6,
 15 7, or 13A”; and

16 (ii) in the fourth sentence, in para-
 17 graph (3), by striking “15(a)(4) or” and
 18 inserting “15(a)(4), a violation of section
 19 15(a)(3)(B), or”; and

20 (C) by adding at the end the following:

21 “(g)(1) In addition to any amount that an employer
 22 is liable under the second sentence of subsection (b) for
 23 a violation of a provision of section 13A, an employer that
 24 violates section 13A(c) shall be liable to the employee af-
 25 fected for an additional sum equal to that amount.

1 “(2) The employer shall be subject to such liability
 2 in addition to any other remedy available for such violation
 3 under this section or section 17.”.

4 (c) NOTICE TO EMPLOYEES.—Not later than 30 days
 5 after the date of enactment of this Act, the Secretary of
 6 Labor shall revise the materials the Secretary provides,
 7 under regulations contained in section 516.4 of title 29,
 8 Code of Federal Regulations, to employers for purposes
 9 of a notice explaining the Fair Labor Standards Act of
 10 1938 (29 U.S.C. 201 et seq.) to employees so that the
 11 notice reflects the amendments made to the Act by this
 12 section.

13 **SEC. 4. LIMITATIONS ON SALARY PRACTICES RELATING TO**
 14 **EXEMPT EMPLOYEES.**

15 (a) IN GENERAL.—Section 13 of the Fair Labor
 16 Standards Act of 1938 (29 U.S.C. 213) is amended by
 17 adding at the end the following:

18 “(k)(1)(A) In the case of a determination of whether
 19 an employee is an exempt employee described in para-
 20 graph (1) or (17) of subsection (a), the fact that the em-
 21 ployee is subject to deductions in pay for—

22 “(i) absences of the employee from employment
 23 of less than a full workday; or

24 “(ii) absences of the employee from employment
 25 of less than a full workweek;

1 shall not be considered in making such determination.

2 “(B)(i) Except as provided in clause (ii), in the case
3 of a determination described in subparagraph (A), an ac-
4 tual reduction in pay of the employee may be considered
5 in making the determination for that employee.

6 “(ii) For the purposes of this subsection, an actual
7 reduction in pay of an employee of a public agency shall
8 not be considered in making a determination described in
9 subparagraph (A) if such reduction is permissible under
10 regulations prescribed by the Secretary under section
11 541.5d of title 29, Code of Federal Regulations (as in ef-
12 fect on August 19, 1992).

13 “(C) For the purposes of this paragraph, the term
14 ‘absences’ includes absences as a result of a disciplinary
15 suspension of an employee from employment.

16 “(D) For the purposes of this paragraph, the term
17 ‘actual reduction in pay’ does not include any reduction
18 in accrued paid leave, or any other practice, that does not
19 reduce the amount of pay an employee receives for a pay
20 period.

21 “(2) The payment of overtime compensation or other
22 additions to the compensation of an employee employed
23 on a salary based on hours worked shall not be considered
24 in determining if the employee is an exempt employee de-
25 scribed in paragraph (1) or (17) of subsection (a).”.

1 (b) EFFECTIVE DATE.—The amendment made by
 2 subsection (a) shall take effect on the date of enactment
 3 of this Act and shall apply to any civil action—

4 (1) that involves an issue with respect to sec-
 5 tion 13(a)(1) of the Fair Labor Standards Act of
 6 1938 (29 U.S.C. 213(a)(1)); and

7 (2) in which a final judgment has not been
 8 made prior to such date.

9 **SEC. 5. PROTECTIONS FOR CLAIMS RELATING TO COMPEN-**
 10 **SATORY TIME OFF IN BANKRUPTCY PRO-**
 11 **CEEDINGS.**

12 Section 507(a)(3) of title 11, United States Code, is
 13 amended—

14 (1) by striking “for—” and inserting the fol-
 15 lowing: “on the condition that all accrued compen-
 16 satory time off (as defined in section 7 of the Fair
 17 Labor Standards Act of 1938 (29 U.S.C. 207)) shall
 18 be deemed to have been earned within 90 days be-
 19 fore the date of the filing of the petition or the date
 20 of the cessation of the debtor’s business, whichever
 21 occurs first, for—”; and

22 (2) in subparagraph (A), by inserting before the
 23 semicolon the following: “or the value of unused, ac-
 24 crued compensatory time off (as defined in section

1 7 of the Fair Labor Standards Act of 1938 (29
2 U.S.C. 207))”.

○